

NELSON L. COHEN, ESQ.
Nevada State Bar No. 7657
JARED G. CHRISTENSEN, ESQ.
Nevada State Bar No. 11538
BREMER WHYTE BROWN & O'MEARA LLP
1160 N. TOWN CENTER DRIVE
SUITE 250
LAS VEGAS, NV 89144
TELEPHONE: (702) 258-6665
FACSIMILE: (702) 258-6662
ncohen@bremerwhyte.com
jchristensen@bremerwhyte.com
Attorneys for Defendants,
WTAIWAN SHIN YEH ENTERPRISE CO., LTD., SHIN
CREST PTE, LTD. and WAL-MART STORES, INC.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ANDREW CLAPPER and CYNTHIA) Case No. 2:14-cv-02183-RCJ-CWH
JACQUELINE GUTIERREZ, individually and as)
Parents and Natural Guardians of DANIEL)
SANTOYO and ISABELLA CLAPPER, minor)
children,)
Plaintiffs,)
vs.)
WAL-MART STORES, INC., a Delaware)
corporation; TAIWAN SHIN YEH)
ENTERPRISE CO., LTD., a foreign entity; SHIN)
CREST PTE, LTD., a foreign entity; DOES I-X;)
and XI-XX, inclusive,)
Defendants.)

STIPULATED PROTECTIVE ORDER AND CONFIDENTIALITY AGREEMENT

Upon stipulation of the parties, it is hereby ORDERED that all documents and other materials produced by Defendants voluntarily or by Order of the Court, have been and will be produced under the following conditions.

I.

A. The parties recognize that discovery in this matter may call for the production of materials containing confidential and proprietary business, technical and other commercially

1 sensitive information and that the producing party has a protected proprietary and property interest
2 in those materials.

3 B. If Defendants have a good faith factual and legal basis for asserting a privilege or
4 exemption from public disclosure, Defendants may designate as "CONFIDENTIAL" the portion
5 of any produced material they consider subject to their claim of privilege or exemption in
6 accordance with Section I.E., below, and relying upon the terms of this order in producing said
7 information. Such "CONFIDENTIAL" designation shall make the designated portions of those
8 produced materials and all copies, prints, summaries, translations, or other reproductions of such
9 material subject to this Stipulated Protective Order. This Stipulated Protective Order shall also
10 apply to the specific pages and lines from oral depositions and discovery responses that are
11 designated as "CONFIDENTIAL" by the producing party in accordance with Section I.E., below.

12 C. When used in this Stipulated Protective Order, the word "CONFIDENTIAL" means
13 designated commercially sensitive business information, and other confidential and/or proprietary
14 information of Defendants or their affiliates and parent companies.

15 D. When used in this Stipulated Protective Order, the term "CONFIDENTIAL
16 MATERIAL" means all designated written materials, computer documents, claims histories, claims
17 files, adjustment data, videotapes, Answers to Interrogatories, Responses to Requests for
18 Production of Documents, deposition transcripts, documents produced by the producing party to
19 any governmental agency or body or any time deemed by a governmental agency to be confidential
20 under Federal or State law which discloses "CONFIDENTIAL" information. Nothing in the
21 Stipulated Protective Order, however, shall be interpreted to require the production of any trade
22 secret information as defined in Nevada Revised Statute 600A.010 et. seq. or otherwise.

23 E. In order to designate a portion of any document or other printed material as
24 "CONFIDENTIAL," Defendants shall mark the designated pages of the material with the word
25 "CONFIDENTIAL" in a manner that does not cover, obscure, or impair the legibility of any
26 information contained within the material but which makes it difficult to remove the designation.
27 In order to designate a computer database, disc, compact disc, drive, or other electronically
28 recorded material as "CONFIDENTIAL," the producing party shall mark the case or envelope

1 containing the material with the word "CONFIDENTIAL." Documents printed from such
2 electronic media shall be marked the same as documents originally produced on paper.

3 F. In the case of a deposition or oral examination, counsel for Defendants may, during
4 the deposition, designate on the record that testimony involving "CONFIDENTIAL MATERIAL"
5 be held "CONFIDENTIAL" and the entire deposition transcript will be treated as
6 "CONFIDENTIAL" until counsel for Defendants receives a transcript of the deposition and for 30
7 days thereafter. In the event that Defendants' counsel, during the deposition, does not designate on
8 the record that testimony involving "CONFIDENTIAL MATERIAL" be held as
9 "CONFIDENTIAL," Defendants do not waive their right to designate the deposition testimony as
10 "CONFIDENTIAL" upon receipt of the deposition transcript. After receipt of the deposition
11 transcript, the producing party shall identify by page and line the portion of the material that the
12 producing party intends to designate as "CONFIDENTIAL" in a written letter served to all counsel
13 of record within 30 days after receiving the written deposition transcript from the court reporter.
14 Only the portions of the deposition transcript designated by the producing party during this time
15 period shall remain "CONFIDENTIAL". The parties stipulate that the court reporter or
16 videographer for any such depositions will be given a copy of this Stipulated Protective Order, will
17 execute an acknowledgement thereof, and shall not disclose to anyone (other than the "COVERED
18 PERSONS" as defined in Section 1.F below) any deposition testimony or exhibits in this lawsuit.

19 G. When used in this Stipulated Protective Order, the term "COVERED PERSONS"
20 includes only the following: (1) the Court and all Court personnel; (2) the named parties in this
21 litigation, (3) retained counsel for all of the parties in this litigation, including members of
22 counsel's legal or support staff (e.g. in-house investigators, secretaries, legal assistants, paralegals
23 and law clerks), to the extent reasonably necessary for such persons to render assistance in this
24 litigation; (4) experts retained or consulted by counsel for any party to assist in the preparation,
25 prosecution, or evaluation of this litigation; and (5) the Court, the Court's staff, witnesses, and the
26 jury in this case.

II.

Absent a further Order of the Court, those documents marked as “CONFIDENTIAL MATERIAL” as described in Sections I.C. and I.D. shall not be used for any purpose other than the prosecution or defense of this captioned action, and shall not be shown, disseminated or disclosed in any manner to anyone other than “COVERED PERSONS” as defined in Section I.G. without the prior written agreement of the producing party or Order of the Court after due notice to the producing party.

III.

Before showing or divulging any “CONFIDENTIAL MATERIAL” or “CONFIDENTIAL INFORMATION” to any “COVERED PERSON” other than the Court and Court personnel, counsel shall first obtain from each person a signed “WRITTEN ASSURANCE” in the form attached hereto as Exhibit “A”. Counsel shall maintain a list of all recipients of “CONFIDENTIAL MATERIAL” to whom this paragraph applies and the original of every “WRITTEN ASSURANCE” required pursuant to this paragraph. At the conclusion of the litigation, the parties shall forward to counsel for the producing party each and every signed “WRITTEN ASSURANCE” and a list of all recipients of “CONFIDENTIAL MATERIALS”; however, with regard to consultant(s) not identified as expert(s) in this matter, counsel need only produce a copy of the “WRITTEN ASSURANCE” redacted to remove any reference to the identity of the consultant(s).

IV.

A. If any “CONFIDENTIAL MATERIAL” is filed with this Court, including any pleading incorporating “CONFIDENTIAL MATERIAL,” the portion of such filing containing “CONFIDENTIAL MATERIAL” shall be filed in a sealed envelope on which the following legend shall prominently appear:

ANDREW CLAPPER et al vs. WAL-MART STORES, INC., et al, Case No. 2:14-cv-02183-RCJ-CWH - This Envelope contains CONFIDENTIAL documents or other material filed by Defendants. It shall not be opened nor the contents thereof displayed or revealed except by the Order of this Court.

B. “CONFIDENTIAL MATERIAL” may be introduced into evidence, if otherwise admissible, provided that it may only be done so during a hearing or trial when counsel for Defendants are present and maintain the right to seek in camera treatment of such documents or materials. Further, the Court may take such steps as it deems reasonably necessary to preserve the confidentiality of the documents or information.

C. All writings submitted to or filed with the Court in connection with any pre-trial proceeding that contains, set forth, summarizes, or otherwise discloses “CONFIDENTIAL MATERIAL” shall be under seal and such documents shall not be publicly available, except by further Order of this Court.

D. If any party or person who has obtained “CONFIDENTIAL MATERIAL” under the terms of this Stipulated Protective Order receives a subpoena or other legal process commanding the production of any such “CONFIDENTIAL MATERIAL,” such party or person shall promptly notify counsel for Defendants of the service of the subpoena and shall promptly transmit a copy of the subpoena to counsel for Defendants. Defendants will have ten days from the date of confirmed receipt of the subpoena by their counsel to intervene to request that the subpoena be quashed. If a motion to quash is filed, the party or person receiving the subpoena shall not produce any “CONFIDENTIAL MATERIAL” in response to the subpoena without either the prior written consent of counsel for Defendants or an order of a Court of competent jurisdiction.

V.

Certain parties could produce large volumes of materials in discovery in this matter, including large collections of materials in the form of paper or electronic format repositories, increasing the likelihood that information protected from discovery by certain privileges or immunities, or “CONFIDENTIAL MATERIAL” not marked as such, may be produced inadvertently. Therefore, the following provisions shall apply to the production of information in this case.

A. Inadvertent production of documents subject to work product immunity, the attorney-client privilege, the trade secret and proprietary business information privilege, or other legal privilege, rule or doctrine protecting information from discovery shall not constitute a waiver of the immunity or privilege either from the inadvertently produced document or its subject matter

1 (so-called “subject matter waiver”). The producing party shall notify the receiving party in writing
2 of such inadvertent production promptly upon becoming aware of it.

3 B. If reasonably prompt notification is made, such inadvertently produced documents
4 and all copies thereof, as well as all notes or other work product reflecting the contents of such
5 materials, shall be returned to the producing party or destroyed, and such returned material shall be
6 deleted from any litigation-support or database. No use shall be made of such documents during
7 discovery or trial nor shall they be disclosed to anyone who was not given access to them before
8 the request to return and/or destroy said documents.

9 C. If any party contends that the notification of inadvertent production was not
10 “reasonably prompt”, it shall notify the producing party in writing, and will make no further use of
11 such documentation pending a resolution of its status by the Court. It shall be the burden of the
12 producing party to move for a Protective Order regarding the inadvertent production, and to
13 demonstrate both that the production was inadvertent, that reasonable diligence was exercised to
14 identify the inadvertently produced information, and that notification was made with reasonable
15 promptness after discovery of the inadvertent production.

16 D. The party returning or destroying such documents may move the Court for an Order
17 compelling production of the material, but such motion shall not assert the fact or circumstances of
18 the inadvertent production as a ground for entering such an Order.

19 E. Inadvertent failure to designate produced materials as “CONFIDENTIAL
20 MATERIAL,” pursuant to the terms of Section I above shall not constitute a waiver of the right to
21 designate such materials “CONFIDENTIAL,” provided that the producing party shall notify the
22 receiving party of such inadvertent failure to designate promptly upon becoming aware of it.

23 F. If reasonable notification is made of such failure to designate, such inadvertently
24 non-designated documents and all copies thereof, shall be returned to the producing party or
25 destroyed and such material shall be deleted from any litigation-support or database. No use shall
26 be made of such non-designated documents during discovery or at trial nor shall they be disclosed
27 to anyone who was not given access to them before the request to return or destroy.

28

1 G. Any inadvertently produced document or documents provided to the Court pursuant
2 to Section V shall not be considered "court records" as defined in Nevada Revised Statutes Section
3 231.001 et. seq. and similar statutes.

4 VI.

5 Within 90 days after the final disposition of this lawsuit, by settlement, trial or appeal, counsel
6 for the parties shall deliver to counsel for the producing party all "CONFIDENTIAL MATERIAL"
7 including any copies (except those determined by the Court or agreed by the parties not to be
8 "CONFIDENTIAL") which have been disseminated to any "COVERED PERSONS," except that
9 parties and their counsel may retain pleadings, memoranda, declarations, affidavits, non-
10 "CONFIDENTIAL" portions of deposition transcripts, notes, summaries, expert reports, trial and
11 hearing transcripts, or other attorney work product which refers to or describes "CONFIDENTIAL
12 MATERIAL." Deposition transcripts need not be returned if all "CONFIDENTIAL" portions have
13 been destroyed or obliterated.

14 VII.

15 In the event that counsel for any party, in good faith, disputes the designation of any document
16 as "CONFIDENTIAL," he or she shall notify counsel for Defendants in writing within thirty days
17 of the receipt of "CONFIDENTIAL MATERIAL" specifying the material that is challenged.
18 Defendants would then bear the responsibility of seasonably applying to the Court for a
19 determination that the specified "CONFIDENTIAL MATERIAL" is protected pursuant to this
20 Stipulated Protective Order. Until a final determination by the Court, any disputed document shall
21 be treated as "CONFIDENTIAL MATERIAL" pursuant to this Stipulated Protective Order.
22 Nothing in the Stipulated Protective Order shall be construed to alter or shift the burdens of proof
23 and persuasion as they apply to the assertion of privileges or exemptions from public disclosure.

24 VIII.

25 A. This Stipulated Protective Order shall not preclude the parties from exercising any
26 rights or raising any objections otherwise available to them under the rules of discovery or
27 evidence. Nothing contained in this Stipulated Protective Order shall, in any manner, change, alter
28 or modify any of the rights of the producing party or any other party under any other Orders issued

1 by any other courts concerning the protection of “CONFIDENTIAL MATERIALS” and
2 “CONFIDENTIAL” information. Nothing in this Stipulated Protective Order shall limit the rights
3 of the parties to apply for further Protective Orders or for modification of the terms of this
4 Stipulated Protective Order.

5 B. This Stipulated Protective Order may not be waived, modified, abandoned, or
6 terminated, in whole or in part, except by an instrument in writing signed by the parties, or by
7 Order of the issuing Court. If any provision of this Stipulated Protective Order shall be held invalid
8 for any reason whatsoever, the remaining provisions shall not be affected thereby.

9 C. This Stipulated Protective Order shall be binding upon the parties hereto, upon their
10 attorneys, and upon the parties’ and their attorney’s successors, executors, personal representatives,
11 administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents,
12 independent contractors, or other persons or organizations, over which they have control.

IX.

At the conclusion of this lawsuit, the Court shall retain jurisdiction of this lawsuit for the enforcement of this Stipulated Protective Order.

This Protective Order is agreed to by and between the parties.

BREMER WHYTE BROWN & O'MEARA LLP



By: _____

NELSON L. COHEN, ESQ.

Nevada Bar No. 7657

JARED G. CHRISTENSEN, ESQ.

Nevada Bar No. 11538

Attorneys for Defendants

By: _____

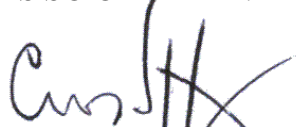
/s/ Martin A. Little

MARTIN A. LITTLE, ESQ.

Nevada Bar No. 7067

Attorney for Plaintiffs

IT IS SO ORDERED.



C.W. Hoffman, Jr.

United States Magistrate Judge

Dated: April 17, 2015

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 16th day of April, 2015, **STIPULATED PROTECTIVE ORDER AND CONFIDENTIALITY AGREEMENT** was served on all parties or persons requesting notice via the United State District Court CM/ECF system.



An Employee of Bremer Whyte Brown & O'Meara, LLP